



## Town Board of Trustees

Tuesday, June 22, 2021 at 7:00 pm

**PLEASE SILENCE ALL CELL PHONE AND ELECTRONIC DEVICES.  
THANK YOU.**

### 1. Meeting Information

207 Muegge Way, Bennett, CO 80102

For a live stream of the meeting use the information below:

<https://us02web.zoom.us/j/82773784921>

Meeting ID: 827 7378 4921

Passcode: 410223

One tap mobile

+16699006833

### 2. Call to Order

Royce D. Pindell, Mayor

#### a. Roll Call

### 3. Pledge of Allegiance

Royce D. Pindell, Mayor

### 4. Approval of Agenda

Royce D. Pindell, Mayor

### 5. Consent Agenda

Royce D. Pindell, Mayor

#### a. June 8, 2021 - Regular Meeting Minutes

#### Attachments:

- **June 8, 2021 - Regular Meeting Minutes** (06-08-2021\_-\_Regular\_Meeting\_Minutes.pdf)

### Public Comments on Items Not Scheduled for Public Hearing

The Board of Trustees welcomes you. Thank you for joining us for our Town of Bennett Board of Trustees Meeting. If you are not speaking, we ask that you please mute your microphone. For public comment please sign up on the provided sheet or in the chat

box. If you are on the phone, once we get through the sign-up sheet and chat box we will call for any other comments for items not on the agenda.

Your comments will be limited to three (3) minutes. The Board may not respond to your comments this evening, rather they may take your comments and suggestions under advisement and provide direction to the appropriate member of Town staff for follow-up. Thank you.

## Regular Business

### 6. Action/Discussion Items

#### a. Option to Purchase Agreement - Kiowa Creek Preserve

Resolution No. 875-21 - A Resolution Approving an Option to Purchase Agreement  
Rachel Summers, Deputy Town Administrator

#### Attachments:

- **Staff Report Option to Purchase Agreement - Kiowa Creek Preserve** (0-Staff\_Report\_Option\_to\_Purchase\_-\_Kiowa\_Creek\_Preserve.pdf)
- **Option to Purchase Agreement** (2-Option\_to\_Purchase\_Agreement\_-\_Kiowa\_Creek\_Preserve.pdf)
- **Exhibit A - Option Property Depiction** (3-Kiowa\_Creek\_Preserve\_Town\_Land\_Use\_Map\_with\_Aerial.pdf)
- **Resolution No. 875-21 - A Resolution Approving an Option to Purchase Agreement** (1-Resolution\_No.\_875-21\_Kiowa\_Creek\_\_Option\_Contract.pdf)
- **Suggested Motion** (suggested\_motion.pdf)

#### b. Urban County Intergovernmental Agreement (IGA) with Adams County

Trish Stiles, Town Administrator

Rachel Summers, Deputy Town Administrator

#### Attachments:

- **Staff Report Urban County Intergovernmental Agreement (IGA) with Adams County** (Staff\_Report\_Adams\_County\_IGA\_Urban\_County\_Member.pdf)
- **Adams County Intergovernmental Agreement (IGA) for the Community Development Block Grant Program** (CDBG\_FINAL\_Urban\_County\_IGA\_FY\_2022-2024\_All\_Parties\_06022021.pdf)
- **Suggested Motion** (suggested\_motion.pdf)

#### c. CO Highway 79 and Marketplace Drive Intersection - Mast Arm Contract

Daymon Johnson, Capital Projects Director

**Attachments:**

- **Staff Report CO Highway 79 and Marketplace Drive Intersection - Mast Arm Contract** (0-Staff\_Report\_-\_Mast\_Arm\_Purchase\_Order\_Reassignment.pdf)
- **Millerbernd Manufacturing Company Proposal** (1-Millerbernd\_-\_Proposal\_-\_6.15.21.pdf)
- **Email from Josh Greene at Illumination Systems** (2-PO\_Cancellation\_-\_Josh\_Greene\_Email\_-\_6.14.21.JPG)
- **Suggested Motion** (3-Suggested\_Motion.pdf)

**d. Town of Bennett Watering Restrictions**

Resolution No. 876-21 - A Resolution Limiting the Hours of Outdoor Watering  
Trish Stiles, Town Administrator

**Attachments:**

- **Resolution No. 876-21 - A Resolution Limiting the Hours of Outdoor Watering** (Water\_Restrictions\_2021.reso.pdf)
- **Suggested Motion** (suggested\_motion.pdf)

**7. Town Administrator Report**

Trish Stiles, Town Administrator

**8. Trustee Comments and Committee Reports**

Mayor and Trustees

**9. Adjournment**

Individuals with disabilities who need auxiliary aids in attending the meeting may request assistance by contacting the Town Hall at 207 Muegge Way, Bennett, CO 80102-7806, (303) 644-3249. Please give notice at least 48 hours in advance of the meeting to allow for enough time in making the necessary arrangements.

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Contact: Christina Hart (chart@bennett.co.us 1303-644-3249 X1001) | Agenda published on 06/17/2021 at 8:53 AM

**TOWN OF BENNETT, COLORADO**  
**BOARD OF TRUSTEES**  
**Regular Meeting**  
**June 8, 2021**

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**1. CALL TO ORDER**

The Board of Trustees of the Town of Bennett met in regular session on Tuesday, June 8, 2021 via hybrid meeting. Mayor Royce Pindell called the meeting to order at 7:00 p.m. The following persons were present upon the call of the roll:

Mayor: Royce Pindell

Trustees Present: Darvin Harrell  
Whitney Oakley  
Rich Pulliam  
Denice Smith - *excused*  
Donna Sus  
Larry Vittum

Staff Present: Trish Stiles, *Town Administrator*  
Rachel Summers, *Deputy Town Administrator*  
Taeler Houlberg, *Assistant to the Town Administrator*  
Alison Belcher, *Assistant Communications Director*  
Sara Aragon, *Community Development Manager*  
Robin Price, *Public Works Director*  
Ricky Martinez, *Utility Services Supervisor*  
Danette Ruvalcaba, *Finance and Technology Director*  
Adam Meis, *Finance and Technology Coordinator*  
Steve Hebert, *Planning and Economic Development Manager*  
Lynette White, *Economic Development Manager*  
Dan Giroux, *Town Engineer*  
Melinda Culley, *Town Attorney*  
Gabrielle Renner, *Town Traffic Engineer*  
Christina Hart, *Town Clerk*

Public Present: Kathy Smiley, Todd Johnson, Tom Geislar, Barry Moore, Paul Worthman,  
John Chesney, Dave Lewis, James Hinkle, Shane Orr

**2. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Mayor Royce Pindell.

**3. APPROVAL OF AGENDA**

MAYOR PRO TEM HARRELL MOVED, TRUSTEE VITTUM SECONDED to approve the agenda as presented.

The voting was as follows:

- YES: Oakley, Pindell, Pulliam, Sus, Vittum, Harrell
- NO: None
- EXCUSED: Smith

Mayor Royce Pindell declared the motion carried by unanimous vote.

**4. CONSENT AGENDA**

TRUSTEE VITTUM MOVED, MAYOR PRO TEM HARRELL SECONDED to approve the consent agenda as presented.

- YES: Pindell, Pulliam, Sus, Vittum, Harrell, Oakley
- NO: None
- EXCUSED: Smith

Mayor Royce Pindell declared the motion carried by unanimous vote.

- A. **Action:** Approval of May 25, 2021 Regular Meeting Minutes

**PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA**

Chris Clemens and Eva Gergely, 8369 East Lowry Blvd., Denver, Colorado 80230, have purchased a new home in the Bennett Sky View development. They are excited about becoming active residents of the Bennett community.

John Cheney, Lennar Colorado, LLC, 9193 South Jamaica, Englewood, Colorado 80112, expressed concerns on the Bennett Village Subdivision Agreement in regards to the Bennett School District 29J land dedication.

**5. REGULAR BUSINESS**

**A. Public Hearing**

**1. Worthman/Bennett Village Property Rezoning – Case No. 21.11**

**Ordinance No. 727-21 – An Ordinance Approving a Rezoning for the Worthman/Bennett Village Property**

Mayor Pindell called the matter of Case No. 21.11 Worthman/Bennett Village Property Rezoning to order. The public hearing was opened at 7:09 p.m.

Christina Hart, Town Clerk, stated that in accordance with Colorado State Statute, notice of the public hearing was properly posted and published in the Eastern Colorado News on April 30, 2021. Legal #2473.

Mayor Pro Tem Harrell disclosed to the Board of Trustees of his personal and financial interest by receiving a neighborhood notice of the subject property public hearing, and recused himself from the public hearing discussion and voting.

Steve Hebert, Planning and Economic Development Manager reported to the Trustees the 21.4-acre property known as Bennett Village, previously the Worthman Property, is currently zoned MH – Mobile Home District. The Bennett Village Final Plat, which created 133 lots for single-family detached homes, was approved by the Town Board of Trustees on April 13, 2021.

The property is located immediately east of the Brothers Four subdivision, bounded on the north by Kiowa Street, on the south by Bennett Avenue and on the east by the Custer Street alignment.

The applicant has applied for rezoning of the property to R-2 – Mid-Density Residential District because the prospective homebuilder wants to build two-story houses. The current MH – Mobile Home District has a maximum building height for the principal structure of twenty (20) feet, which will accommodate a single-story mobile home; but, will not accommodate a two-story single-family detached house. The R-2 District has a maximum height limitation for the principal structure of thirty-five (35) feet, which will accommodate a two-story house.

The table below summarizes the zoning of the immediately adjacent properties.

Direction	Adjacent Zone District	Land Use
North	C – General Commercial	Commercial and Residential
East	C – General Commercial	Vacant
South	PD – Planned Development	Residential, Bennett Crossing (LGI)
West	R-1 – Low Density Residential	Brothers Four Neighborhood

In the proposed R-2 zone district, the following land uses are Permitted Uses as “uses-by-right.” Uses-by-right do not require further review and approval by the Board of Trustees.

1. Elementary and secondary education school
2. Religious institutions
3. Group home for elderly, developmentally disabled or mentally ill persons
4. Home occupations
5. Manufactured homes
6. Single-family dwelling
7. Public utilities, minor
8. Eligible telecommunications facilities request

There are several other land uses allowed as Conditional Uses requiring additional Board of Trustees’ review and approval, including but not limited to day care centers, parks, recreation centers, fire or police stations and bed and breakfast establishments. For a full list of Permitted and Conditional Uses in R-2, see the attached table. Mobile homes are not allowed in the R-2 District.

The table below summarizes the lot and building standards for the existing MH District and the proposed R-2 District.

Lot and Building Standards – Comparing the MH District to R-2 District		
	MH	R-2
Minimum Lot Area	3,250 sq. ft.	3,500 sq. ft.
Minimum Lot Width	40 feet	25 feet
Maximum Lot Coverage	75%	70%
Maximum Height (Principal Structure)	20 feet	35 feet

Note the minimum lot size in the R-2 District is 250 square feet larger than in the MH District.

The previously approved Bennett Village Final Plat was designed to be consistent with both the existing MH District and the proposed R-2 District. All lots in the approved final plat meet the 3,500 sq. ft. minimum lot size of R-2, and have a minimum lot width of 40 feet.

This summary of public services and utilities is consistent with a similar discussion for the previously approved Bennett Village Final Plat. The referenced attachments are the same as those in the staff report for the final plat application.

Water

Water will be provided by the Town of Bennett. See the attached Town Engineer’s memorandum.

Sanitary Sewer

Sanitary sewer will be provided by the Town of Bennett. See the attached Town Engineer’s memorandum.

Stormwater Management

Stormwater will be collected and conveyed in accordance with Town standards to prevent any on-site or off-site flooding. See the attached Town Engineer’s memorandum.

Access, Traffic and Streets

Local access is provided by Bennett Avenue and Kiowa Street, as well as a network of interior streets. Alleys will serve rear lot garages. All streets will be built to Town standards. The approved final plat dedicated right-of-way for all public streets to be constructed at the developer’s expense. Rezoning from MH to R-2 will not result in an increase in traffic on local streets. See the attached Traffic Impact Study.

Fire and Rescue

All streets, turn-a-rounds, fire hydrants and water pressure must meet the Bennett-Watkins Fire and Rescue design standards. The development is subject to further hydrant location design review by the Fire District, which must occur prior to issuance of building permits. See the attached Bennett-Watkins Fire and Rescue response.

### Gas, Electricity and Telecommunications

Natural gas is available from Colorado Natural Gas, electricity from IREA and telecommunications from Eastern Slope Technologies (ESRTA) or Comcast. Appropriate easements for these providers were identified on the final plat.

The criteria for reviewing a rezoning proposal come from two different sections of the code, both of which refer to the Town's Comprehensive Plan.

### Sec. 16-1-90. - Conformity with Comprehensive Plan.

*"All applications for development approval, including, but not limited to, site plans, conditional use permits and subdivision plats, shall be evaluated in relation to its [sic] conformance with the policies and embodied within the Comprehensive Plan and all applicable special area plans or master plans."*

### Sec. 16-2-360. - Rezoning.

*"The Board of Trustees has determined that the Zoning Map should not be amended (rezoning of property approved) unless the rezoning is consistent with the goals and policies of the Comprehensive Plan and promotes the general welfare of the community. If a proposed rezoning is inconsistent with the Comprehensive Plan, the request may only be approved if the applicant demonstrates that the requested rezone is justified because of changed or changing conditions in the particular area, in the Town in general or that the rezoning is necessary to correct a manifest error in the existing zone classification."*

The subject property is within an area designated in the Town Centre Land Use Concept area as Mixed Residential.

Notice of the Planning and Zoning Commission and Board of Trustees hearings was posted on the property consistent with the Municipal Code. All property owners within 300 feet have also been notified by mail. No public comments have been submitted to date.

On May 17, 2021, the Town of Bennett Planning and Zoning Commission adopted Resolution 2021-05 recommending the property be rezoned to R-2 – Mid Density Residential District.

### **APPLICANT PRESENTATION**

John Cheney, Lennar Colorado, LLC, reported to the Board of Trustees the developer feels the proposed rezoning from MH to R-2 is desirable for the area.

### **PUBLIC COMMENTS**

There were no public comments presented.

Mayor Pindell closed the public hearing on Case No. 21.11 Bennett Village rezoning at 7:28 p.m.

Trustee Oakley is in support of the rezoning application for the product the applicant wants to build. The proposed rezoning change is in compliance with the Town Comprehensive Plan.

Trustee Pulliam is also in favor of the proposed rezoning application. The application is an improvement of the change from MH to R-2 and is appropriate for the area.

Mayor Pindell expressed his support of the rezoning application stating the rezoning will allow for much needed additional single family homes.

TRUSTEE SUS MOVED, TRUSTEE OAKLEY SECONDED, to approve Ordinance No. 727-21 – An ordinance approving a rezoning for the Worthman/Bennett Village Property. Voting was as follows:

YES: Pulliam, Sus, Vittum, Oakley, Pindell

NO: None

EXCUSED: Smith

RECUSED: Harrell

Mayor Royce Pindell declared the motion passed by unanimous vote.

## 2. 2020 Town of Bennett, Colorado Audit

### **Resolution No. 874-21 – A Resolution Accepting the 2020 Audit for the Town of Bennett**

Jim Hinkle, Hinkle and Company PC, expressed his gratitude to the Board of Trustees and Town staff for the opportunity to provide comments on the 2020 Town of Bennett audit.

Mr. Hinkle reported to the Board of Trustees that Hinkle and Company PC have audited the financial statements of the Town of Bennett as of and for the year ended December 31, 2020 and have issued their report dated on May 25, 2021.

No matters have come to the attention of Hinkle and Company PC that would require the company to inform the Board of Trustees and/or Town Management of methods used to account for significant unusual transactions and the effect of significant accounting policies in controversial or emerging areas for a lack of authoritative guidance or consensus. No disagreements arose during the course of the audit.

The Antelope Hills General Improvement District (GID) outstanding bonds will become a blended component within the Town of Bennett budget. The blended component is a result of the management of the GID governing Board and management is the same as the Town of Bennett Board. This follows the Governmental Accounting Standard Board (GASB). It is suggested that during the 2021 year the GASB be followed and reported as a blended component. The GID will be incorporated into the Town governmental activities the GID will not be listed separately on the financial statements.

Danette Ruvalcaba, Finance and Technology Director, reported to the Trustees Town staff will be consulting with Alan Guckenburger regarding any liabilities and/or impacts of the GID incorporating into the Town of Bennett financials prior to the 2021 audit i.e.: Town bond rating.

Trish Stiles, Town Administrator, reported to the Trustees the Town experienced a major change needing to hire a new auditor. It was a long process for the 2020 audit, due to the change, therefore staff did not find it in the best interest of the Town to incorporate the GID into the Town financials without first bringing it before the Board of Trustees.

TRUSTEE VITTUM MOVED, TRUSTEE PULLIAM SECONDED to approve Resolution No. 874-21 – A resolution accepting the 2020 Audit for the Town of Bennett. The voting was as follows:

YES: Vittum, Harrell, Oakley, Pindell, Pulliam, Sus

NO: None

EXCUSED: Smith

Mayor Royce Pindell declared the motion carried by unanimous vote.

### 3. Bennett Gives Back Grant Awards Recommendations

Danette Ruvalcaba, Finance and Technology Director, reported to the Board of Trustees the purpose of the Bennett Gives Back Grant (BGB Grant) program is for eligible organization and special districts to obtain additional resources to help supplement services or resources provided to the residents of Bennett.

The Town of Bennett, through the BGB Grant, may provide a grant up to 90% of the costs of a qualifying event, project, program, or activity in an amount up to \$10,000 per organization per year from the Town's general fund.

The Town received 11 BGB Grant applications, for a total requested amount of \$83,621.15. The maximum funds available for this program in 2021 are \$40,000, therefore, the Bennett Gives Back Advisory Board met on May 24<sup>th</sup> to develop funding recommendations.

The applications received were as follows:

- **Bennett Boy Scout Troop 30-Replace Boy Scout Equipment and Storage**
  - Project Budget-\$11,112
  - Grant Request-\$10,000
  
- **Bennett Cub Scout Pack 30-Centralized Location for Pack 30 Resources**
  - Project Budget-\$4,753
  - Grant Request-\$4,278
  
- **Bennett Fire Protection District-Bennett Fire Station 92 Personal Protective Equipment Washer**
  - Project Budget-\$14,880
  - Grant Request-\$7,440
  
- **Bennett Imagination Library Program-Bennett Imagination Library Program**
  - Project Budget-\$3,050
  - Grant Request-\$2,745
  
- **Bennett Park and Recreation District-Maintenance Surprises**
  - Project Budget-\$20,000
  - Grant Request-\$10,000

- **Bennett Park and Recreation District-Pool Must Haves**
  - Project Budget-\$22,500
  - Grant Request-\$10,000
- **Bennett Wrestling Club-BWC Gear and Scales**
  - Project Budget-\$8,954
  - Grant Request-\$8,058
- **CASA of Adams and Broomfield Counties-CASA Volunteer Program**
  - Project Budget-\$713,432
  - Grant Request-\$3,000
- **Discovery Time Kids Early Learning Center-Water Mitigation and Beautification of Area Surrounding Discovery Time Kids Early Learning Center**
  - Project Budget-\$15,800
  - Grant Request-\$10,000
- **Bennett Community Food Bank-Semi-Trailer and Forklift**
  - Project Budget-\$9,000
  - Grant Request-\$8,100
- **Hearts, Hands and Hope Foundation-Continuous Support for Cancer Patients**
  - Project Budget-\$11,000
  - Grant Request-\$10,000

TRUSTEE OAKLEY MOVED, TRUSTEE VITTUM SECONDED to approve funding for the following grant applications:

- Bennett Boy Scout Troop 30 in the amount of \$5,815 for replacement of equipment and storage.
- Bennett Fire Protection District-Bennett Fire Station 92 in the amount of \$7,440 for personal protective equipment washer.
- Bennett Imagination Library Program – Bennett Imagination Library Program in the amount of \$2,745.
- Bennett Parks and Recreation District in the amount of \$7,500 for pool must haves.
- Bennett Wrestling Club in the amount of \$4,000 for Bennett Wrestling Club gear and scales.
- Discovery Time Kids Early Learning Center in the amount of \$5,000 for center-water mitigation and beautification of area surrounding Discovery Time Kids Early Learning Center.

- Hearts, Hands and Hope Foundation in the amount of \$10,000 for continuous support for cancer patients.

The voting was as follows:

YES: Harrell, Oakley, Pindell, Pulliam, Sus  
 NO: None  
 EXCUSED: Smith

Mayor Royce Pindell declared the motion carried by unanimous vote.

#### 4. Proposed Updates for Chapter 13 of the Bennett Municipal Code

##### **Ordinance No. 724-21 – An Ordinance Amending Chapter 13 of the Bennett Municipal Code and Adding Cross-Connection Control Programming Requirements**

Taeler Houlberg, Assistant to the Town Administrator, reported to the Board of Trustees Over the next several months, Staff will be reviewing the entirety of the Bennett Municipal Code and proposing updates to the Board of Trustees. Updates may include, but are not limited to, changes in assigned designees, clarifying language, grammatical updates, removal of unnecessary or redundant items, etc. Staff will also propose any needed and necessary ordinances that are required for safety and/or current Town projects.

Draft Ordinance 724-21 lists all of the proposed changes Staff is recommending for Chapter 13 of the Bennett Municipal Code. These changes were brought about through both review and necessity. The following section of this report lists proposed code updates from the Clerk and Court, Finance and Public Works Departments. Included in the ordinance is Article V of Chapter 13, which will provide the structure and regulations for the Backflow Prevention and Cross-Connection Control Program that has been discussed in previous meetings.

Per State Regulation 11.39, each water distributor is required to have a Backflow Prevention and Cross-Connection Control Plan (BPCCC) in place to comply with State rules and regulations. An ordinance that includes the BPCCC has been compiled and specifically fits Town needs, including the ability for the Town to enforce the rules and regulations set forth by the Colorado Department of Health and Environment (CDPHE). The intent of Article V is to allow the Board of Trustees to protect the Town’s water system from contamination and pollution that can occur via backflow from a privately owned distribution or water system. Article V also provides for maintaining a Cross-Connection Control Program, which will systematically prevent the contamination or pollution of the Town’s water system.

Chapter 13 proposed updates are as follows:

##### **Article I – Water and Sewer Development**

Sec. 13-1-5

- Defines specific words and phrases to be used for the purposes of Chapter 13.

Sec. 13-1-10

- Updates language to specify that development fees are set forth in the Town of Bennett Schedule of Fees. This creates consistency with other chapters in the code.

Sec. 13-1-80

- Designates the Town Administrator as the individual to authorize and determine provisions associated with reimbursement agreements with developers and subdividers for extending water and sewer mains by or through vacant properties.
- Updates language so that no party can seek reimbursement if a determination of costs was not made prior to construction of the main extension.

Sec. 13-1-140

- Designates the Finance Director as the individual who can prepare and record a “notice of assessment.”

**Article II – Sewer Regulations**

Sec. 13-2-30

- Designates the Finance Director as the individual responsible for the annual winter monthly consumption (AWMC) determinations.
- Designates the Finance Director as the individual to receive requests to reinstate sewer service.

Sec. 13-2-40

- Designates the Finance Director to certify unpaid fees to the County Treasurer.
- Updates language to specify that development fees are set forth in the Town of Bennett Schedule of Fees.

**Article III – Water Regulations**

Sec. 13-3-10

- Outlines the requirement that any property owner seeking water service with the Town shall execute a water service agreement that sets forth parameters of water service for the property, including a SFE allocation and water usage limits. The SFE allocation shall be based on the SFEs allocated to the development pursuant to Section 13-1-10 of this Code, or if no such allocation has been made then the allocation will be one (1) SFE.
- Outlines that if actual water usage on a property exceeds the water usage limits corresponding to the SFE allocation for the property, the property owner may be responsible for paying an additional water development fee in accordance with Section 13-1-10 of this Code.

Sec. 13-3-40

- Designates the Finance Director as the individual to receive water discontinuance notifications and specifies that fees are set forth in the Town of Bennett Schedule of Fees.

Sec. 13-3-60

- Designates the Finance Director to certify unpaid water accounts to the County Treasurer.

Sec. 13-3-280

- Designates the Finance Director as the individual to receive readings from meters.

**Article V – Cross-Connection Control Program**

Sec. 13-5-5

- Defines all words and phrases necessary to understand the provisions laid out in Article V of Chapter 13.

Sec. 13-5-10

- Outlines the purpose of the article to protect the Town’s water system from contaminants or pollutants that could enter the system by backflow through a service connection.

Sec. 13-5-20

- Outlines by what authority the Town can institute the Cross-Connection Control Program and that the Town has authority to do the following:
  - Survey all service connections within the distribution system;
  - Impose fees for the administration of the article;
  - Maintain records of cross-connection surveys and all items installed for containment; and
  - Enforce all provisions of the article.

Sec. 13-5-30

- Outlines all the buildings, entities and users to which Article V does and doesn’t apply.

Sec. 13-5-40

- Designates the responsibility for implementing the Cross-Connection Control Program to the Public Works Director or their designee.

Sec. 13-5-50

- States that the most stringent provisions in the code will prevail if a dispute arises between Article V and the International Plumbing Code.

Sec. 13-5-60

- Outlines the requirements for the Cross-Connection Control Program including the following items:
  - Applicable service connections shall be subject to a survey for cross-connections;
  - If a cross-connection is identified, an appropriate backflow prevention assembly or method must be installed at the customer’s water service connection within 120 days;
  - Limitations on where a backflow prevention assembly can be installed;
  - Devices must be protected from drainage, freezing and thermal expansion;
  - Backflow prevention assemblies and methods are subject to inspection testing, maintenance and repairs, as needed;
  - All costs associated with the backflow prevention assembly or method shall be the responsibility of the customer;
  - Building plans must be submitted for all new buildings and approved by the Town prior to the issuance of water service; and
  - Provide special instructions for various fire sprinkling or antifreeze systems.

Sec. 13-5-70

- Outlines the Town's water system and the source and distribution facilities to the point of the water service connection.

Sec. 13-5-80

- Outlines the expectations for the customer associated with inspections, testing and repair including:
  - Certified inspections and operational tests on backflow preventers upon installation and at least once per year;
  - Backflow prevention assembly or method being repaired or replaced when it is found defective; and
  - The Town reserves the right to test or check the installation and operation of any backflow prevention assembly or method.

Sec. 13-5-90

- The Town shall have the right and authority to do the following if an uncontrolled cross-connection is discovered:
  - Control the cross-connection;
  - Remove the cross-connection;
  - Suspend water service to the cross-connection; and
  - Suspend water service to the property.
- The Town shall give written notice to any customer to install a backflow prevention assembly or method when their plumbing system has been found to present a risk to the Town's water distribution system through uncontrolled cross-connection.

Sec. 13-5-100

- Outlines the expectations for recordkeeping and reporting for the owner and Public Works Department and states what information should be included on all test reports.

Sec. 13-5-110

- Outlines the penalties for violations of any provision in Article V and the possibility of discontinuance of water service if there is an imminent threat to public health.

Trustee Oakley stated she believes it is the responsibility of the Board and the Town to communicate with the developers of the limitation on outdoor irrigation with home buyers so the future home owners understand how much can be irrigated.

Trustee Pulliam stated "This is a model example of good governance way to approach a problem like this. Property owners who choose to step outside the boundaries should accept the burden of the cost and not raise the rates across the board. It's a way for people to do the right thing or pay for the privilege to do the wrong thing."

TRUSTEE PULLIAM MOVED, TRUSTEE SUS SECONDED to approve Ordinance No. 724-21 – An ordinance amending Chapter 13 of the Bennett Municipal Code and adding Cross-Connection Control Program requirements and strike Section 7 of the ordinance as presented to the Board of Trustees during the June 8<sup>th</sup>, 2021 board meeting. The voting was as follows:

YES: Oakley, Pindell, Pulliam, Sus, Vittum

NO: Harrell

EXCUSED: Smith

Mayor Royce Pindell declared the motion passed 5 to 1.

## 6. TRUSTEE COMMENTS AND COMMITTEE REPORTS

### Larry Vittum

Trustee Vittum reported on the following;

- Attended the Arapahoe Transportation Forum the week of June 7<sup>th</sup>, 2021. Discussions surrounded Senate Bill 260.
- The Transportation Improvement (TIP) cycle of 2024-2027 is approaching.

### Whitey Oakley

Trustee Oakley reported on the following;

- Kudos were given to Alison Belcher, Assistant Communications Director, for the design of the Bennett events QR Code hand-outs.

### Donna Sus

Trustee Sus reported on the following;

- Trustee Sus and Trustee Oakley have been discussing efforts of door to door canvassing by the Board of Trustees. Ms. Stiles will have the opportunity to review the ideas potentially presenting the ideas to the rest of the Trustees.

### Darvin Harrell

Mayor Pro Tem Harrell reported on the following;

- Inquired about the Mount View Cemetery construction time-line i.e.: fencing.

TRUSTEE VITTUM MOVED, MAYOR PRO TEM HARREL SECONDED to take a recess at 9:12 p.m. Voting was as follows:

YES: Pindell, Pulliam, Sus, Vittum, Harrell, Oakley

NO: None

EXCUSED: Smith

The Mayor declared the motion carried by unanimous vote.

The meeting resumed at 9:29 p.m.

**7. EXECUTIVE SESSION**

For determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators under C.R.S. 24-6-402(4)(e); Bennett Village Subdivision Agreement.

TRUSTEE PULLIAM MOVED, TRUSTEE SUS SECONDED to go into executive session for: Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators under C.R.S. 24-6-402(4)(e); Bennett Village Subdivision Agreement.

YES: Pindell, Pulliam, Sus, Vittum, Harrell, Oakley

NO: None

EXCUSED: Smith

The Mayor declared the motion carried by unanimous vote.

The Board went into executive session at 9:30 p.m.

The Board came out of executive session at 10:22 p.m. The Mayor announced that the Board had been in executive session and the following persons participated virtually in that session: Mayor Royce Pindell, Trish Stiles, Trustee Oakley, Trustee Pulliam, Trustee Vittum, Melinda Culley, Trustee Sus, Mayor Pro Tem Harrell, Trustee Vittum, Steve Hebert, Adam Meis, Dan Giroux and Christina Hart. The Mayor asked if there were any matters not included in the motion for an executive session or violations of the Open Meetings Law, and if so, that these concerns be stated for the record. No concerns were presented.

The Board of Trustees resumed the open meeting at 10:24 p.m.

**9. REPORT FROM EXECUTIVE SESSION**

During the executive session the board discussed matters that are subject to negotiations and directed negotiators regarding specific aspects of the Bennett Village Subdivision Agreement.

**10. ACTION/DISCUSSION**

To Take Action on Items Discussed in the Executive Session - Bennett Village Subdivision Agreement

TRUSTEE PULLIAM MOVED, TRUSTEE VITTUM SECONDED to approve the Bennett Village Subdivision Agreement for 6.15 acres at \$45,000 per acre rate for 133 total units for a total of \$276,911 with the first payment of \$138,455.50 due at the time of the first permit and the remaining \$138,455.50 due at the time of the 66 permit. Voting was as follows:

YES: Pulliam, Sus, Vittum, Harrell, Oakley, Pindell

NO: None

EXCUSED: Smith

The Mayor declared the motion carried by unanimous vote.

11. ADJOURNMENT

TRUSTEE PULLIAM MOVED, MAYOR PRO TEM HARRELL SECONDED to adjourn the meeting. The meeting was adjourned at 10:32 p.m. Voting was as follows:

YES: Sus, Vittum, Harrell, Oakley, Pindell, Pulliam

NO: None

EXCUSED: Smith

The Mayor declared the motion carried by unanimous vote.

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Royce D. Pindell, Mayor

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Christina Hart, Town Clerk

TO: Mayor and Town of Bennett Board of Trustees  
FROM: Rachel Summers, Deputy Town Administrator  
DATE: June 22, 2021  
SUBJECT: Option to Purchase Agreement – Kiowa Creek Preserve

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## Background

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On March 23, 2021, the Board directed staff on negotiations to purchase an estimated 156 acres within the Kiowa Creek Preserve, generally referred to as MacLennan Open Space. The limitations subject to the negotiations were honored and agreeable by all parties.

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## Option to Purchase Agreement

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In consideration for the Town's payment of two thousand five hundred dollars (\$2,500), the Owner, Kiowa Creek Preserve Holdings, LLC, grants to the Town the exclusive option to purchase the aforementioned acreage. Upon execution of the Option to Purchase Agreement, are the following terms:

- The \$2,500 Option Money shall be applied to the purchase price of the Option Property at closing.
- The Option Period shall run for nine (9) months, beginning no later than June 22, 2021, and terminating at 11:59 p.m. on March 21, 2022.
- The Town shall obtain a boundary survey for the final determination of the property size and location at the Town's own sole cost and expense. When such survey is complete, it will be the Town's responsibility to provide a new exhibit of the legal descriptions and a surveyor's drawing depicting the final Option Property.
- During the Option Period, the Town shall be provided with full access to the Option Property and permitted to inspect and examine the Option Property and improvements thereon, including, without limitation, zoning, drainage, flood control, water, sewage, electricity, gas and other utility connections, economic feasibility, construction suitability, submittals, the parcel map and any other matter, element or concern to the operation of the Option Property.
- The Town shall have the right to perform any environmental assessment or any other investigation that would drill, extract or physically alter or change the condition of the Option Property; provided that Town shall restore the Option Property, if necessary, to its original condition promptly after completing its inspection work and any testing of the Option Property.
- In its sole discretion, the Town may exercise this Option to Purchase at any time during the Option Period by approving an Ordinance authorizing payment for the purchase of the Option Property and delivering written notice of such election to exercise the Option to Owner.
- If the Option to Purchase is exercised, the purchase price shall be six hundred thousand dollars (\$600,000), plus or minus closing adjustments, including the Option Money to be applied to the Purchase Price, and shall be paid in funds available for immediate withdrawal at the time of closing.

## Staff Recommendation

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As identified in the Town of Bennett Comprehensive Plan, the Option Property provides preservation of open space, farmland and areas with environmental significance to the region, which is a guiding principle for the core values of this community.

Staff recommends the Board of Trustees approve Resolution 875-21 authorizing the Mayor to execute the Option to Purchase Agreement with Kiowa Creek Preserve Holdings, LLC, and further authorizing to negotiate and approve on behalf of the Town such revisions to the Option as the Mayor and Town Administrator determines are necessary or desirable for the protection of the Town, so long as the essential terms and conditions of the Option are not altered.

## Attachments

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1. Option to Purchase Agreement
2. Exhibit A – Option Property Depiction
3. Resolution 875-21

## OPTION TO PURCHASE AGREEMENT

**THIS OPTION TO PURCHASE AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 by **KIOWA CREEK PRESERVE HOLDINGS, LLC**, a Colorado limited liability company, hereinafter referred to as the “Owner,” and the **TOWN OF BENNETT**, a Colorado municipal corporation, hereinafter referred to as the “Town.”

**WHEREAS**, Owner owns approximately one hundred fifty six (156) acres of real property located in the North 1/2 of Section 26, Township 3 South, Range 63 West of the 6<sup>th</sup> P.M. and part of the South 1/2 of Section 26, Township 3 South, Range 63 West of the 6<sup>th</sup> P.M. which lies North of County Road 69, County of Adams, State of Colorado (the “Option Property”); and

**WHEREAS**, the Option Property is depicted as PA-5 Park/Open Space on Exhibit A attached hereto and incorporated by reference; and

**WHEREAS**, the Town desires to purchase from Owner and Owner desires to sell to the Town an option to purchase the Option Property on the terms set forth herein (the “Option”).

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, payments, and obligations of the parties hereto, the terms, covenants and conditions hereof, and intending to be legally bound, the parties agree as follows:

1. Incorporation of Recitals and Definitions. The Recitals set forth above are hereby incorporated into this Agreement and made a part hereof by this reference.

2. Grant of Option to Purchase. In consideration for the Town’s payment of Two Thousand Five Hundred Dollars (\$2,500) (the “Option Money”) to Owner the receipt and sufficiency of which is hereby acknowledged by Owner, Owner hereby grants to the Town the exclusive option to purchase upon the following terms and conditions the Option Property together with all improvements thereon, and all fixtures of a permanent nature currently on the Option Property and owned by Owner (if any). The Option Money shall be applied to the purchase price of the Option Property at closing.

3. Option Period. This Option shall run for a period of six (6) months beginning no later than June 8, 2021, and terminating at 11:59 p.m. on December 7, 2021 (the “Option Period”).

4. Exercise of Option. In its sole discretion, the Town may exercise this Option at any time during the Option Period. The Town shall exercise the Option by delivering written notice of such election to exercise the Option to Owner at the Owner’s address set forth herein.

5. Survey.

A. The Town shall obtain a boundary survey (the “Survey”) for the Option Property at the Town’s own sole cost and expense. When such Survey is complete, it will be the Town’s responsibility to cause a new Exhibit to be prepared consisting of the legal descriptions and a surveyor’s drawing depicting the Option Property. Upon completion of such new Exhibit,

the same shall be appended hereto as Exhibit B, and shall constitute the legal description of the Option Property for purposes of the purchase and sale provisions of this Agreement.

B. Town may at Town's election also obtain a complete ALTA survey, at Town's own sole cost and expense.

6. Inspection Rights. Upon execution of this Agreement, Town shall be provided with full access to the Option Property and shall be permitted to inspect and examine the Option Property and improvements thereon, as well as all conditions relating thereto including, without limitation, zoning, drainage, flood control, water, sewage, electricity, gas and other utility connections, economic feasibility, construction suitability, submittals, the parcel map (and any conditions thereto) and any other matter, element or concern with respect to the operation of the Option Property. Without limiting the generality of the foregoing, Town shall have the right to perform any environmental assessment, or any other investigation that would drill, extract or physically alter or change the condition of the Option Property; provided that Town shall restore the Option Property, if necessary, to its original condition promptly after completing its inspection work and any testing of the Option Property, and such obligation shall survive the termination of this Agreement. No examination, inspections or tests by Town shall unreasonably interfere with, or damage, any current use of the Option Property by Owner. Town shall promptly notify Owner in writing of any matter discovered during inspection and/or investigation pursuant to this paragraph 6 which makes the Option Property unsuitable for the Town's purposes, in the Town's sole judgment, and such any such matters shall be deemed Objections to which the provisions of paragraph 8 shall apply.

7. Title Insurance/Title Conditions. The Town shall obtain at its own expense a current commitment for title insurance policy in an amount equal to the Purchase Price within thirty (30) days of the date of this Agreement. Owner will provide written disclosure of off-record conditions within forty-five (45) days of the execution of this Agreement.

8. Objections. In the event that the Town determines that any matter disclosed by the Survey or ALTA Survey, or discovered in the Town's inspection under paragraph 6 above, or discovered in the Town's title review or review of off-record disclosures under paragraph 7 above, or discovered in other due diligence, which makes the Option Property unsuitable for the Town's purposes, in the Town's sole judgment, the Town shall promptly notify the Owner in writing of such matter or matters (hereinafter referred to as "Objections"). The Owner shall have no responsibility whatsoever for curing any Objections; provided however, the Owner, at its option, may cure or remove any Objections by giving the Town written notice of the Owner's intention to cure or remove such Objections within sixty (60) business days after receipt of Town's written notice thereof. If Owner fails to give Town written notice within sixty (60) business days after receipt of written notice of Objections, the Town may waive the Objection(s) or terminate the Agreement.

9. Purchase and Sale. If the Town exercises the Option within the Option Period, this Agreement shall become an agreement for purchase and sale between the Owner and the Town, whereby Owner agrees to sell and the Town agrees to purchase the Option Property upon the terms

and conditions stated herein below in this Agreement.

A. The purchase price shall be Six Hundred Thousand Dollars (\$600,000) (the "Purchase Price") payable as follows: the Purchase Price, plus or minus closing adjustments, including the Option Money to be applied to the Purchase Price, shall be paid in funds available for immediate withdrawal at the time of closing.

B. The Purchase Price shall include all fixtures, improvements and personal property (if any) presently located on the Option Property, conveyed free and clear of all taxes, liens and encumbrances. Any personal property shall be conveyed by bill of sale.

C. The cost of the title commitment referenced in paragraph 7 above and the premium on the title insurance policy shall be paid by the Town. The title company shall deliver the title insurance policy to the Town after closing.

D. The closing and date for delivery of deed shall be within sixty (60) days after the date on which notice of exercise of the Option is given to Owner by the Town. The specific date and hour of closing shall be determined by mutual agreement of the parties. The closing shall be held at Bennett Town Hall, or such other location as may be determined by mutual agreement of the parties.

E. Title shall be merchantable in Owner. Subject to payment or tender as above provided, Owner shall execute and deliver a good and sufficient SPECIAL WARRANTY DEED to the Town conveying the Option Property free and clear of all taxes, except the general real estate property taxes for the year of closing, and free and clear of all liens, mortgages, deeds of trust, leases and encumbrances except those that may be permitted by the Town following review of the title commitment. The term "permitted" in the preceding sentence refers to any means by which the Town expresses the permission contemplated in such sentence and also includes any Objections waived as described in paragraph 8 above.

F. Any encumbrance required to be paid by Owner may be paid at the time of settlement at closing from the proceeds of this transaction or from any other source.

G. General real estate taxes and all utility charges shall be prorated to the date of closing. Closing costs shall be shared equally between the Owner and the Town. The Owner and Town shall each pay their own respective legal and professional fees and fees of other consultants incurred by the Owner and Town. The Town shall pay one hundred percent (100%) of all costs of the Town's due diligence, including fees due its consultants and attorneys and all costs and expenses of any survey or Phase I, Phase II, or other environmental studies which the Town desires to obtain.

H. Any encumbrance required to be paid by Owner may be paid at the time of settlement at closing from the proceeds of this transaction or from any other source.

I. Possession of the Property shall be delivered to the Town on the date and time of closing.

J. If any payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed as herein provided, there shall be the following remedies:

(i) IF THE TOWN IS IN DEFAULT, then all payments and things of value received hereunder shall be forfeited by the Town and retained on behalf of Owner and both parties shall thereafter be released from all obligations hereunder. It is agreed that such payments and things of value are liquidated damages and the Owner expressly waives the remedies of specific performance and additional damages.

(ii) IF OWNER IS IN DEFAULT, the Town may elect to treat this Agreement as terminated in which case the Town may recover the return of the Option Money; or (b) the Town may elect to treat this Agreement and the Option contained herein and the Agreement as being in full force and effect and the Town shall have the right to an action for specific performance or damages, or both.

(iii) Anything to the contrary herein notwithstanding, in the event of any litigation arising out of this Agreement, the court shall award to the substantially prevailing party all reasonable costs and expenses including attorney fees. The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Agreement. For the resolution of any dispute arising hereunder, venue shall be in the courts of Adams County, State of Colorado.

11. Time is of the Essence. Time is of the essence hereof, and all terms, conditions, obligations and covenants shall be tendered or performed as specified herein. If any obligation hereunder is not performed or waived as herein provided, the Parties shall have such remedies as are available under applicable law.

12. Assignment. This Agreement and the Option contained herein may not be assigned to any other party without Owner's written consent, which consent may be withheld at Owner's sole discretion.

13. Failure to Exercise Option. If the Town fails to exercise the Option within the Option Period, this Agreement and the Option created hereby shall automatically terminate.

14. No Sale During Option Period. Other than the Option and terms set forth herein, Owner shall not sell or exchange the Property or any part thereof, nor shall the Owner enter into any sale, option, exchange or trade agreement or contract for either or both of the Option Property for the duration of the Option Period.

15. No Development or Encumbrances During Option Period. The Owner shall not develop or encumber the Option Property during the term of this Option. Owner represents and agrees that there are no existing leases and that Owner will enter no leases that cannot be terminated on or before the closing.

16. Notices. Any notices required or permitted hereunder shall be in writing and shall be sufficient if personally delivered, sent by overnight delivery or sent by certified mail, return receipt, addressed as follows:

If to the Owner:  
KIOWA CREEK PRESERVE HOLDINGS LLC  
56077 E. 6th Ave  
Strasburg, CO 80136  
Attn: Russell McLennan

If to the Town:  
Town of Bennett  
207 Muegge Way  
Bennett, CO 80102  
Attn: Town Administrator

Notice personally delivered and overnight delivery shall be effective upon delivery. Mail notice shall be effective three (3) business days after mailing.

17. Recording of Agreement. The Town may record this Agreement, at the sole decision of the Town, in the office of the Adams County Clerk and Recorder, and the Town shall retain the recorded Agreement.

18. Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

19. Binding Agreement. This Agreement shall be binding upon and for the benefit of the parties hereto, their successors and assigns.

**IN WITNESS WHEREOF**, the parties have executed this Option to Purchase Agreement on the date and year first above written.

TOWN OF BENNETT, COLORADO

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Royce D. Pindell, Mayor

ATTEST:

\_\_\_\_\_  
Christina Hart, Town Clerk

KIOWA CREEK PRESERVE HOLDINGS LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**Owner's Acknowledgment**

STATE OF COLORADO            )  
  )ss  
COUNTY OF \_\_\_\_\_        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2021, by \_\_\_\_\_.

Witness my hand and official seal.

My commission expires on: \_\_\_\_\_

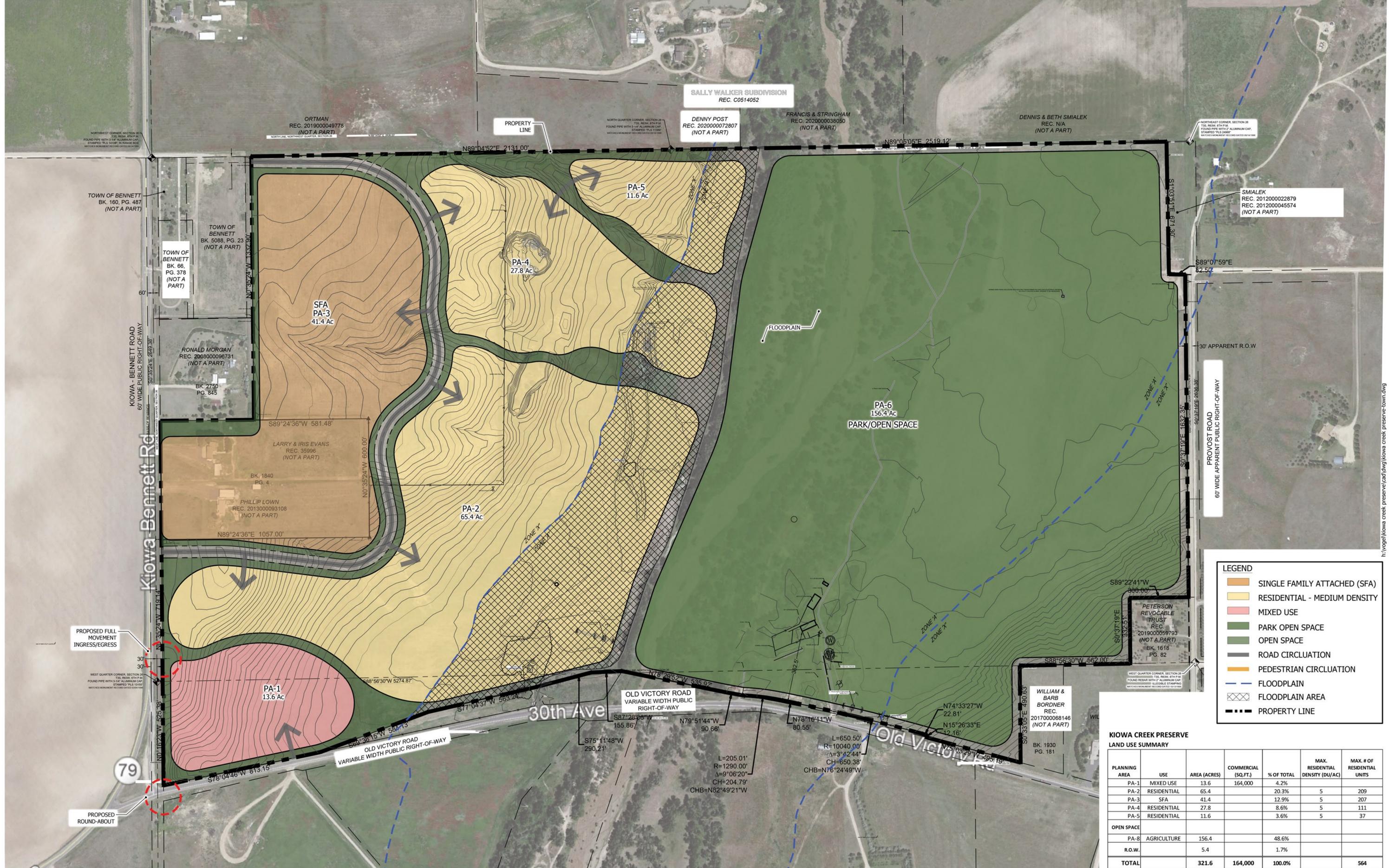
(SEAL)

\_\_\_\_\_  
Notary Public

**Exhibit A**  
**Depiction of Option Property**

**Exhibit B**  
**Legal Description of Option Property**

[To be added upon completion of survey]



**LEGEND**

- SINGLE FAMILY ATTACHED (SFA)
- RESIDENTIAL - MEDIUM DENSITY
- MIXED USE
- PARK OPEN SPACE
- OPEN SPACE
- ROAD CIRCULATION
- PEDESTRIAN CIRCULATION
- FLOODPLAIN
- FLOODPLAIN AREA
- PROPERTY LINE

**KIOWA CREEK PRESERVE  
LAND USE SUMMARY**

PLANNING AREA	USE	AREA (ACRES)	COMMERCIAL (SQ.FT.)	% OF TOTAL	MAX. RESIDENTIAL DENSITY (DU/AC)	MAX. # OF RESIDENTIAL UNITS
PA-1	MIXED USE	13.6	164,000	4.2%	5	209
PA-2	RESIDENTIAL	65.4		20.3%	5	207
PA-3	SFA	41.4		12.9%	5	111
PA-4	RESIDENTIAL	27.8		8.6%	5	37
PA-5	RESIDENTIAL	11.6		3.6%	5	
<b>OPEN SPACE</b>						
PA-8	AGRICULTURE	156.4		48.6%		
R.O.W.		5.4		1.7%		
<b>TOTAL</b>		<b>321.6</b>	<b>164,000</b>	<b>100.0%</b>		<b>564</b>

# KIOWA CREEK PRESERVE

## Conceptual Land Use Plan

**RESOLUTION NO. 875-21**

**A RESOLUTION APPROVING AN OPTION TO PURCHASE AGREEMENT**

**WHEREAS**, the Town and Kiowa Creek Preserve Holdings, LLC (“Owner”) have been in negotiations for the Town’s purchase of a portion of Owner’s property located in the North 1/2 of Section 26, Township 3 South, Range 63 West of the 6<sup>th</sup> P.M. and part of the South 1/2 of Section 26, Township 3 South, Range 63 West of the 6<sup>th</sup> P.M. which lies North of County Road 69, County of Adams, State of Colorado; and

**WHEREAS**, in connection with this proposed transaction, the Town and Owner have negotiated an Option to Purchase Agreement, a copy of which is attached hereto; and

**WHEREAS**, the Board has reviewed the Option to Purchase Agreement, finds its terms acceptable, and desires to approve it in the form that accompanies this resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF BENNETT, COLORADO:**

**Section 1.** The proposed Option to Purchase Agreement between the Town and Kiowa Creek Preserve Holdings, LLC (the “Option”) is hereby approved in essentially the same form as that accompanying this resolution.

**Section 2.** The Mayor is hereby authorized to execute the Option approved by this resolution, and is further authorized to negotiate and approve on behalf of the Town such revisions to the Option as the Mayor and Town Administrator determine are necessary or desirable for the protection of the Town, so long as the essential terms and conditions of the Option are not altered.

**INTRODUCED, READ AND ADOPTED THIS 22nd DAY OF JUNE 2021.**

TOWN OF BENNETT

\_\_\_\_\_  
Royce D. Pindell, Mayor

ATTEST:

\_\_\_\_\_  
Christina Hart, Town Clerk

### **Suggested Motion**

I move to approve Resolution No. 875-21 – Authorizing the Mayor to execute the Option to Purchase Agreement with Kiowa Creek Preserve Holdings, LLC, and further authorizing to negotiate and approve on behalf of the Town such revision to the Option as the Mayor and Town Administrator determines are necessary or desirable for the protection of the Town, so long as the essential terms and conditions of the Option are not altered.



TO: Mayor and Town of Bennett Board of Trustees  
FROM: Trish Stiles, Town Administrator  
Rachel Summers, Deputy Town Administrator  
DATE: June 22, 2021  
SUBJECT: Adams County I.G.A. for the Community Development Block Grant Program

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## Background

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In 1974 the U.S. Congress enacted the Housing and Community Development Act of 1974, as amended (“CDBG Program”), permitting and providing for the participation of the Federal government in a wide range of local housing and community development activities and programs, which activities and programs are administered by the U.S. Department of Housing and Urban Development (“H.U.D.”) and funded annually through the Community Development Block Grant (“CDBG”); and the HOME Investment Partnerships Program (“HOME”) enacted under Title II (42 U.S.C. 12701-12839) of the Cranston-Gonzalez National Affordable Housing Act.

The primary objective of the Programs is the development of viable urban communities by providing decent housing and a suitable living environment and the expansion of economic opportunities, mainly for persons of low-and moderate-income. H.U.D. rules and regulations governing the CDBG Program, provide that a county must qualify as an Urban County, and submit to H.U.D. an annual request for funding in the form of a Consolidated Plan. Adams County has qualified as an Urban County since the Federal fiscal year 1986 and has requalified every three (3) years thereafter.

Eligible cities and units of local government within Adams County must enter into an intergovernmental or cooperative agreement and may thereby be included in the Urban County’s CDBG Program. Eligible cities include the Cities of Brighton, Federal Heights, Northglenn, **Town of Bennett**, and Adams County (unincorporated areas), referred to as URBAN COUNTY MEMBERS.

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## I.G.A Summary

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- Much of the language in the IGA is derived from standardized language that H.U.D. will require and may not be changed or negotiated.
- The initial term of this Agreement shall be for three (3) program years, beginning October 1, 2022, and ending September 30, 2025. This Agreement shall automatically be renewed for an additional three (3) year terms unless any PARTY provides written notice that it elects not to participate in a new, or next, qualification period.
- Individually receive a formula allocation under the HOME Program only through the Urban County. Thus, even if the Urban County does not receive a HOME formula allocation, the URBAN COUNTY MEMBERS cannot form a HOME Consortium with other local governments.
- Will cooperate and work with the County in the preparation of detailed projects and other activities.

## Staff Recommendation

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Staff recommends the Board of Trustees approve the Intergovernmental Agreement with Adams County for the Conduct of the Community Development Block Grant Program, and have determined that it would be mutually beneficial and in the public interest to enter into this Agreement.

## Attachments

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1. Adams County I.G.A. for the Community Development Block Grant Program

**INTERGOVERNMENTAL AGREEMENT  
WITH ADAMS COUNTY FOR THE CONDUCT OF THE  
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

THIS INTERGOVERNMENTAL AGREEMENT (“COUNTY”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, between the BOARD OF COUNTY COMMISSIONERS, COUNTY OF ADAMS (“COUNTY”), a political subdivision of the STATE of COLORADO, located at 4430 South Adams County Parkway, Brighton, Colorado, 80601-8205; and City of Brighton a home-rule municipality, located at 500 S. 4<sup>th</sup> Avenue, Brighton, Colorado 80601; City of Northglenn, a home -rule municipality, located at 11701 Community Center Drive, Northglenn, CO 80233, the City of Federal Heights, a home -rule municipality, located at 2380 W. 90<sup>th</sup> Avenue, Federal Heights, Colorado 80260; and the Town of Bennett, a home -rule municipality, located at 207 Muegge Way, Bennett, Colorado 80102 (individually “URBAN COUNTY MEMBER”, collectively “URBAN COUNTY MEMBERS”). The COUNTY and the URBAN COUNTY MEMBERS may be referred to collectively as “PARTIES,” and individually as “PARTY.”

**RECITALS**

WHEREAS, in 1974 the U.S. Congress enacted the Housing and Community Development Act of 1974, as amended (“CDBG Program”) thereby permitting and providing for the participation of the Federal government in a wide range of local housing and community development activities and programs, which activities and programs are administered by the U.S. Department of Housing and Urban Development (“HUD”) and funded annually through the Community Development Block Grant (“CDBG”); and the HOME Investment Partnerships Program (“HOME”) enacted under Title II (42 U.S.C. 12701-12839) of the Cranston-Gonzalez National Affordable Housing Act which activities and programs are administered by HUD, collectively referred to as “Programs”; and

WHEREAS, the primary objective of the Programs is the development of viable urban communities by providing decent housing and a suitable living environment and the expansion of economic opportunities, mainly for persons of low- and moderate-income. This objective is to be accomplished by providing financial assistance in the form of block grant funds to state and local governments for the conduct and administration of housing and community development activities and programs as contemplated under the Programs; and

WHEREAS, HUD rules and regulations governing the CDBG Program, as published in 24 C.F.R., Volume 3, Subtitle B, Chapter V, Part 570 (“CDBG Regulations”), provide that a county must qualify as an Urban County, and submit to HUD an annual request for funding in the form of a Consolidated Plan (“Con Plan”) or an Annual Action Plan (“AAP”); and

WHEREAS, Adams County has qualified as an Urban County since Federal fiscal year (“FY”) 1986 and has requalified every three (3) years thereafter; and

WHEREAS, eligible cities and units of local government within Adams County must enter into an intergovernmental or cooperative agreement, and may thereby be included in the Urban County’s

CDBG Program. Eligible cities include the Cities of Brighton, Federal Heights, Northglenn, Town of Bennett, and Adams County (unincorporated areas) (“Urban County”); and

WHEREAS, participation in the Urban County automatically engages participation in the HOME program under the Adams County HOME Consortium; and

WHEREAS, it is recognized that the COUNTY does not have independent legal authority to conduct some kinds of community development and housing assistance activities within the boundaries of each of the URBAN COUNTY MEMBERS and, therefore, its ability to conduct the CDBG Program within the boundaries of URBAN COUNTY MEMBERS is limited. Accordingly, in order for the URBAN COUNTY MEMBERS to be considered a part of the Urban County and be included in the County’s annual requests to HUD for CDBG and HOME Program funds, CDBG regulations require that the URBAN COUNTY MEMBERS and the COUNTY enter into a cooperation agreement wherein the URBAN COUNTY MEMBERS authorize and agree to cooperate with the COUNTY to undertake or to assist in the undertaking of essential community development and housing assistance activities within the boundaries of each of the URBAN COUNTY MEMBERS, as may be approved and authorized in the COUNTY’s annual grant agreements with HUD; and

WHEREAS, HUD has determined that the COUNTY is authorized to undertake essential community development activities in its unincorporated areas that are necessary to qualify as an Urban County to receive funds from HUD by annual grant agreement. This determination is based on the authority granted the COUNTY pursuant to §§ 29-3-101 to 123, §§ 30-11-101 to 107; §§ 30-20-301 to 310; and §§ 30-20-401 to 422, Colorado Revised Statutes (C.R.S.), as amended; and

WHEREAS, pursuant to Colo. Const. art. XIV, § 18 and § 29-1-203, C.R.S., as amended, the COUNTY and each of the URBAN COUNTY MEMBERS are expressly authorized to cooperate and contract with each other for any function, service, or facility lawfully authorized to each; and

WHEREAS, the COUNTY and URBAN COUNTY MEMBERS have determined that it would be mutually beneficial and in the public interest to enter into this Agreement.

**[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]**

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises herein set forth, the sufficiency of which is hereby acknowledged, the COUNTY and the URBAN COUNTY MEMBERS agree as follows:

### I. TERM OF THE AGREEMENT

This Agreement covers the CDBG and HOME programs. The three (3) FYs covered by this Agreement and by the Urban County qualification period is for FY 2022, 2023, and 2024. Funding for this Agreement is based on the FY, which begins October 1 and ends September 30 of the following year.

Further, funds allocated from HUD to the COUNTY are expended and granted based the COUNTY'S defined program year, or October 1-September 30. The initial term of this Agreement shall be for three (3) program years, beginning **October 1, 2022**, and ending **September 30, 2025**. Program years may be adjusted at any time by the COUNTY with written notice provided to the URBAN COUNTY MEMBERS individually.

The URBAN COUNTY MEMBERS understand they may each individually receive a formula allocation under the HOME Program only through the Urban County. Thus, even if the Urban County does not receive a HOME formula allocation, the URBAN COUNTY MEMBERS cannot form a HOME Consortium with other local governments. Additionally, the URBAN COUNTY MEMBERS may receive a formula allocation under the Emergency Shelter Grant (ESG) Program only through the Urban County.

This Agreement shall automatically be renewed for additional three (3) year terms unless any PARTY provides written notice that it elects not to participate in a new, or next, qualification period. By the date specified in HUD's Urban County qualification notice for the next qualification period, the COUNTY shall provide notice to each of the URBAN COUNTY MEMBERS of their individual rights not to participate in the additional term, pursuant to applicable HUD regulations. Any changes to this Agreement required pursuant to HUD's Urban County Qualification Notice shall be made by written amendment to this Agreement, which shall be mutually agreed upon and executed by all PARTIES hereto and submitted to HUD.

The PARTIES agree that they will adopt any amendment to the Agreement incorporating changes necessary to meet the requirement for cooperation agreements set forth in an Urban County Qualification Notice applicable for a subsequent three (3)-year Urban County qualification period, and to submit such amendment to HUD as provided in the Urban County Qualification Notice.

This Agreement shall remain in effect until the CDBG funds and Program Income ("PI") received with respect to activities carried out during the three-year qualification period and any applicable successive qualification periods pursuant to renewals of the Agreement are expended and the funded activities completed, and neither the COUNTY and nor any URBAN COUNTY MEMBERS can terminate or withdraw from the Agreement while it remains in effect. Rules and

regulations to qualify or re-qualify as an Urban County are published annually by HUD through an official Urban County Qualification Notice.

## II. RESPONSIBILITIES OF THE URBAN COUNTY MEMBERS

- A. **URBAN COUNTY MEMBERS and COUNTY Cooperation.** Each URBAN COUNTY MEMBER will cooperate and work with the COUNTY in the preparation of detailed projects and other activities to be conducted or performed within the boundaries of each URBAN COUNTY MEMBER during the FYs in which this Agreement is in effect. Each URBAN COUNTY MEMBER will also cooperate with the COUNTY, and the COUNTY will cooperate with the URBAN COUNTY MEMBER, to undertake or assist in undertaking community renewal and lower income housing assistance activities, specifically urban renewal and publicly assisted housing. The finalized projects and activities will be included in the COUNTY's Con Plan or AAP. The URBAN COUNTY MEMBER understands and agrees, however, that the COUNTY shall have final responsibility for the selection of all projects and activities to be included in the grant requests and the submission of requests. Each URBAN COUNTY MEMBER shall cooperate fully with the COUNTY in all CDBG Program efforts planned and performed hereunder and does hereby allow and permit the COUNTY to undertake or assist in undertaking essential community development and housing assistance activities within the URBAN COUNTY MEMBER as may be approved and authorized in the COUNTY's CDBG Plans, Agreements and/or Contracts, including the AAP and/or Con Plan.
- B. **Delegation of Administrative and Supervisory Control.** Each URBAN COUNTY MEMBER acknowledges that the COUNTY is ultimately responsible to HUD for the supervision and administration of any funds received by the Urban County or Participating Jurisdiction under the CDBG Program. However, to the extent authorized by law, the COUNTY hereby delegates to each URBAN COUNTY MEMBER responsibility for the supervision, administration, and expenditure of any funds it is allocated pursuant to this Agreement. Each URBAN COUNTY MEMBER hereby expressly agrees to independently supervise, administer, and spend such funds in compliance with this Agreement, project specific Agreements and/or Contracts, and the AAP and/or Con Plan.
- C. **Project Applications and Timelines.** Each URBAN COUNTY MEMBER shall submit to the COUNTY, no less frequent than annually, a formal application or proposal, including a timeline and budget for each project or activity. The application will be due pursuant to the COUNTY's established application timeline. The project or activity shall commence when the COUNTY provides written notification to each URBAN COUNTY MEMBER of proposal/project/activity approval and authorization by the COUNTY and/or HUD and a fully executed Subgrantee or Subrecipient Agreement.

The COUNTY will review all proposed CDBG projects and activities to determine whether they are being carried out in a timely manner as required by CDBG Regulations, 24 C.F.R. Volume 3, Subtitle B, Chapter V, Part 570.902.

- D. Subrecipient Agreements.** Pursuant to CDBG Regulations, as published in 24 C.F.R. Volume 3, Subtitle B, Chapter V, Part 570.501(b), each URBAN COUNTY MEMBER is subject to the same requirements applicable to “subrecipients or subgrantees,” including the requirement of a written agreement as set forth in 24 C.F.R. Volume 3, Subtitle B, Chapter V, Part 570.503. Additionally, the COUNTY shall use Subrecipient or Subgrantee Agreements for all projects administered on behalf of each URBAN COUNTY MEMBER and shall notify the URBAN COUNTY MEMBER of individual project and/or activity COUNTY approvals.
- E. Non-Appropriation Clauses.** Each URBAN COUNTY MEMBER agrees that every contract to which it is a party involving the use of CDBG funds allocated hereunder shall include a non-appropriation clause. Such clause shall state that the funding therefore is contingent upon the continuing allocation and availability of CDBG funding and not upon the availability of COUNTY General funds.
- F. Accounting Standards.** Each URBAN COUNTY MEMBER's financial management system shall comply with the standards specified in 2 CFR 200 or superseded regulations. In addition, each URBAN COUNTY MEMBER agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
- G. Small Cities or State CDBG Program.** Each URBAN COUNTY MEMBER understands that while this Agreement is in effect it may not apply for grants under the “Small Cities” or State CDBG Programs for the Federal fiscal years during which it is participating in the Urban County’s CDBG Program.
- H. Requests for Additional Funding.** Pursuant to CDBG Regulations, 24 C.F.R. Volume 3, Subtitle B, Chapter V, Part 570.504, Each URBAN COUNTY MEMBER shall fully expend all CDBG funds prior to requesting any additional funding from the COUNTY. If an URBAN COUNTY MEMBER terminates its participation in the Urban County, any CDBG Program funds received by that URBAN COUNTY MEMBER thereafter shall be returned to the COUNTY, unless the URBAN COUNTY MEMBER has become an “Entitlement Grantee” and the COUNTY agrees to permit the use of the funds by the URBAN COUNTY MEMBER solely for the purposes permitted under the CDBG Regulations governing Entitlement Grantee programs.
- I. Compliance With Local Laws.** All responsibilities of each URBAN COUNTY MEMBER enumerated herein shall be subject to applicable State statutes and regulations and the individual ordinances, resolutions, and rules and regulations of each URBAN COUNTY MEMBER insofar as they apply to projects or activities located within the boundaries of each URBAN COUNTY MEMBER.
- J. Additional Stipulations.** An URBAN COUNTY MEMBER may not sell, trade, or otherwise transfer all or any portion of funds to another such metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly or

indirectly receives CDBG funds in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under Title I of the Act.

### III. RESPONSIBILITIES OF THE COUNTY

- A. **Administrative Oversight.** The COUNTY, as a designated Urban County and Participating Jurisdiction, is ultimately responsible for the administrative oversight and supervision of all funds allocated to each URBAN COUNTY MEMBER hereunder. As such, it is responsible for ensuring that all funds allocated to each URBAN COUNTY MEMBER are expended in accordance with the AAP and Con Plan, all agreements and/or contracts, and all applicable Federal, State, and local laws, ordinances, resolutions, regulations, and laws pertaining to this Agreement. It is the intent of the COUNTY to exercise only that degree of administrative and supervisory control concerning the projects and activities occurring within each URBAN COUNTY MEMBER as necessary to comply with such requirements and in accordance with the provisions of this Agreement.
- B. **Distribution of Funds.** The distribution of CDBG funds between the COUNTY and each URBAN COUNTY MEMBER shall be determined as follows:
1. **Administrative Allocation.** The COUNTY shall retain up to twenty percent (20%) of the total CDBG Program funds allocated to the COUNTY for the purpose of general oversight, management, coordination and related costs. The expenditure of these funds shall be within the sole discretion of the COUNTY for the purposes of carrying out the CDBG Program.
  2. **Allocations to URBAN COUNTY MEMBERS.** The funds remaining after the subtraction of the administrative allowance outlined above shall be made available to each URBAN COUNTY MEMBER based on an analysis of the percentage that each URBAN COUNTY MEMBER's population and low-income population represents in comparison to the total population of the Urban County. This formula will reflect the information provided in the most recent decennial United States Census and will be updated periodically as Census data is updated.
  3. **National Objective.** CDBG National Objectives require that at least seventy percent (70%) of CDBG funds utilized must principally benefit low- and moderate-income residents. The COUNTY and each individual URBAN COUNTY MEMBER agree to utilize their CDBG Program allocations each year in accordance with CDBG Program National Objective requirements by allocating at least seventy percent (70%) of their funds toward projects or activities that principally benefit low- and moderate-income residents. In preparing applications for funding, each URBAN COUNTY MEMBER shall also take into consideration provisions for the elimination of slums or blight and provisions to meet urgent community development needs that are a threat to public

health and safety and have become known or serious within the last eighteen (18) months, which are also part of the CDBG Program National Objectives.

4. **Community Service Activities Spending Cap.** Each URBAN COUNTY MEMBER agrees that no more that fifteen percent (15%) of its annual allocation hereunder may be spent on community service activities, pursuant to CDBG Regulations, 24 C.F.R. Chapter 3, Subtitle B, Chapter V, Part 570.201(e). No carry-over of community service activities will be allowed. Community service activities funds not fully expended within the specified timeframe must be recaptured and reprogrammed as part of the next annual funding cycle.
6. **Reallocation of Funds.** If, for any reason, an URBAN COUNTY MEMBER cannot comply with any applicable Federal laws and regulations, the funds for which that particular URBAN COUNTY MEMBER was eligible under this Agreement shall not be paid to that URBAN COUNTY MEMBER and shall be reallocated to the County to appropriate reallocation.

Unobligated or unexpended funds not used by each URBAN COUNTY MEMBER shall be transferred to the allocation formula for redistribution after two (2) consecutive years of no identified projects.

7. **Non-Use of Funds.** PARTIES agree each individual URBAN COUNTY MEMBER may elect not to apply for the funds for which it is eligible, in which case such funds shall be reallocated to the Urban County to reallocate as it deems appropriate.

#### IV. MUTUAL RESPONSIBILITIES

- A. **Compliance With Federal Laws and Regulations.** The PARTIES shall take all actions to do all things that are appropriate and required to comply with the applicable provisions of the grant agreements received from HUD by the COUNTY. These include but are not limited to: the Act, as most recently amended, including all associated regulations, rules, guidelines, and circulars promulgated by the Federal departments, agencies, and commissions relating to the CDBG Program; the Davis-Bacon Act, as applicable; Section 3, as applicable; Minority-Owned Businesses/Women-Owned Businesses, as applicable; the Contract Work Hours and Safety Standards Act; Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; the Housing and Community Development Act of 1974; The Fair Housing Act; the Uniform Federal Accessibility Standards (UFAS); the Americans With Disabilities Act (ADA); and the Residential Lead-Based Paint Hazard Reduction Act of 1992, as amended, and any associated regulations and rules. Additionally, in accordance with 24 C.F.R. Volume 3, Subtitle B, Chapter V, Part 570, no employee, official, agent or consultant of any URBAN COUNTY MEMBER shall exercise any function or responsibility in which a conflict of interest, real or apparent, would arise. The PARTIES shall take all actions necessary to assure compliance with the COUNTY's Urban County certification required by section 104(b) of Title I of the Housing and

Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, and the implementing regulations at 24 CFR part 1, the Fair Housing Act, and the implementing regulations at 24 CFR part 100, and will affirmatively further fair housing. The PARTIES must also comply with section 109 of Title I of the Housing and Community Development Act of 1974, and the implementing regulations at 24 CFR part 6, which incorporates Section 504 of the Rehabilitation Act of 1973, and the implementing regulations at 24 CFR part 8, Title II of the Americans with Disabilities Act, and the implementing regulations at 28 CFR part 35, the Age Discrimination Act of 1975, and the implementing regulation at 24 CFR part 146, and Section 3 of the Housing and Urban Development Act of 1968, and other applicable laws.

- B. Governmental Immunity.** The PARTIES are all “Public Entities” as defined under the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., as amended. Nothing in this Agreement shall be construed to waive or in any manner limit any of the protections or immunities afforded thereunder.
- C. Fair Housing.** The COUNTY is prohibited from funding activities that do not comply with HUD’s policies and regulations concerning fair housing. Each URBAN COUNTY MEMBER agrees not to take any actions pursuant to funding it receives under this Agreement that would result in the COUNTY being in noncompliance with its Fair Housing Certification. Each URBAN COUNTY MEMBER acknowledges that noncompliance by the URBAN COUNTY MEMBER may constitute noncompliance by the COUNTY, which may provide cause for funding sanctions or other remedial actions by HUD. Urban County funding shall not be used for activities in, or in support of, any locality that does not affirmatively further fair housing within its own jurisdiction or that impedes the COUNTY’s actions to comply with the County’s Fair Housing Certification.
- D. Reporting.** Each URBAN COUNTY MEMBER will file all reports and other information necessary to comply with applicable Federal laws and regulations as required by the COUNTY and HUD. This includes providing to the COUNTY information necessary to complete the Consolidated Annual Performance and Evaluation Report (CAPER) in a timely fashion. Requirements will be specified in individual Agreements and/or Contracts. The COUNTY shall be responsible for confirming the compliance of each of the projects within the boundaries of each URBAN COUNTY MEMBER with applicable Federal laws and regulations. The COUNTY shall further be responsible for maintaining proper documentation of the COUNTY’s administrative expenses and for determining that all necessary reports and information are filed with HUD and other applicable Federal agencies in a timely fashion.
- E. Support of Nonprofit Organizations.** The COUNTY recognizes nonprofit organizations as being valuable partners in addressing the needs of low- and moderate-income citizens. Each URBAN COUNTY MEMBER is encouraged to provide financial support utilizing its General funds, CDBG funds, and other available funds to support nonprofit organizations that serve low-income residents within the Urban County and/or within its boundaries. CDBG funds are limited to fifteen percent (15%) annually for community

service activities. CDBG funds should supplement activities above and beyond what local TOWN funds normally support; they are not meant to displace use of local support.

- F. **Termination.** This Agreement may only be terminated as provided herein or as otherwise provided by Federal, State, or local law, ordinance, resolution, regulation, or rule.
- G. **Citizen Participation Plan.** The PARTIES agree to follow the COUNTY's Citizen Participation Plan regarding public engagement for projects carried out under the CDBG Program.
- H. **Venue.** The laws of the State of Colorado shall govern as to the interpretation, validity and effect of this Agreement. The Parties agree that jurisdiction and venue for any disputes arising under this Agreement shall be with the District Court of Adams County, Colorado.
- I. **Modification.** This Agreement contains the entire understanding of the Parties and neither it, nor the rights and obligations hereunder, may be changed, modified, or waived, except by instrument in writing signed by all Parties.
- J. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts and the Parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

**[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]**

IN WITNESS WHEREOF, the COUNTY and the URBAN COUNTY MEMBER have duly executed this Agreement, which shall become effective as of the latest date written below.

**BOARD OF COUNTY COMMISSIONERS  
ADAMS COUNTY, COLORADO**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

ATTEST:

CLERK AND RECORDER

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Adams County Attorney's Office

**CITY OF BRIGHTON  
ADAMS COUNTY, COLORADO**

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Date

ATTEST:

APPROVED AS TO FORM:

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Clerk

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City Attorney

**CITY OF NORTHGLENN  
ADAMS COUNTY, COLORADO**

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Date

ATTEST:

APPROVED AS TO FORM:

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Clerk

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Attorney

**CITY OF FEDERAL HEIGHTS  
ADAMS COUNTY, COLORADO**

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Date

ATTEST:

APPROVED AS TO FORM:

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Clerk

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Attorney

**TOWN OF BENNETT  
ADAMS COUNTY, COLORADO**

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Date

ATTEST:

APPROVED AS TO FORM:

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Clerk

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Attorney

## EXHIBIT 1

### CERTIFICATIONS

**Each URBAN COUNTY MEMBER certifies that:**

- a. It possesses legal authority to make a grant request, and to execute a community development and housing program, and to contract with Adams County for such assistance.
- b. Its governing body will duly adopt or pass as an official act, a resolution, motion or similar action authorizing the person identified as its Official Representative to submit funding proposals and all understandings and assurances contained therein, and directing and authorizing the person identified as the Official Representative to act in connection with the submission of proposals and to provide such additional information as may be required.
- c. CDBG funds/projects/programs will be conducted and administered in compliance with:
  1. Title VI of the Civil Rights Act of 1964 (Pub.L. 88-352; 2 U.S.C. § 2000d *et seq.*);
  2. Title VIII of the Civil Rights Act of 1968 (Pub.L. 90-284; 42 U.S.C. § 3601 *et seq.*); and
  3. Federal Fair Housing Requirements.
- d. It has adopted and is enforcing:
  1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
  2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within jurisdictions.
- e. It will develop proposals of projected use of funds in which at least seventy percent (70%) of the funds are utilized on activities or projects that principally benefit low- and moderate-income families. Remaining funds may be used on activities or projects that address other National Objectives, in compliance with HUD requirements, including activities or projects that eliminate slum or blight, as identified in a HUD-approved Slum/Blight Plan, or projects that meet an urgent need, as defined by HUD.
- f. It will not attempt to recover any capital costs of public improvements assisted in whole or in part with funds provided under Section 206 of the Act or with amounts resulting from guarantee under Section 108 of the Act by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless:
  1. Funds received under Section 108 of the Act are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under Title I of the Act; or
  2. For purposes of assessing any amount against properties owned and occupied by persons of moderate-income, it certifies to the Secretary that it lacks sufficient funds received under Section 108 of the Act to comply with the requirements of subparagraph (1) above.

- g. When appropriate for its projects or activities under this Agreement, it will comply with Section 570.608 requirements for notifications, inspections, testing, and abatement procedures concerning lead-based paint.
- h. It will comply with the other provisions of the Act and with other applicable laws.
- i. It agrees to administer, in good faith, a policy designed to ensure that the activities and facilities are free from illegal use, possession, or distribution of drugs and alcohol by its beneficiaries and follows drug-free workplace policies.

### **Suggested Motion**

I move to approve the Intergovernmental Agreement with Adams County for the Conduct of the Community Development Block Grant Program.

# STAFF REPORT



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TO: Mayor and Town of Bennett Board of Trustees  
FROM: Daymon Johnson, Capital Projects Director  
DATE: June 22, 2021  
SUBJECT: CO Highway 79 and Marketplace Drive Intersection – Mast Arm Contract

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## Background

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On the May 25, 2021 board meeting, Town staff presented and received approval of a contract to purchase with Illumination Systems (ISI) for the fabrication and delivery of the mast arms for the CO Highway 79 and Marketplace Drive intersection project.

Due to billing and insurance requirements from ISI's direct supplier (Millerbernd), the contract and purchase order with ISI have been canceled. ISI was unwilling to meet the requirements and recommended that the Town purchase directly with Millerbernd.

Therefore, a new contract will need to be issued with Millerbernd for the fabrication and delivery of the mast arms and poles. Additionally, there was a cost increase from the original ISI proposal to the Millerbernd proposal due solely to the cost of steel pricing fluctuations.

## Staff Recommendation

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Staff recommends the Board of Trustees authorize the Town Administrator to execute a contract with Millerbernd, with a not-to-exceed amount of \$75,779, for the direct purchase and delivery of the mast arms for the CO Highway 79 and Marketplace Drive intersection project.

## Attachments

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1. Millerbernd Proposal
2. Email from Josh Greene at Illumination Systems



622 6th Street South  
Winsted, MN 55395

P 320.485.2111  
F 320.485.4420  
www.millerberndmtg.com

Our Quotation # 135198-00  
06/15/2021

To :  
TOWN OF BENNET, CO  
207 MUEGGE WAY  
BENNETT CO 80102  
United States

Quotation Valid Thru : 07/15/2021

Attention : DAYMON JOHNSON

<b>CO TOWN OF BENNET SIGNALS</b>					
Item	Part / Description / Details	Quantity Quoted	Unit Price	Extended Price	
001	<b>CO-615-40A-40-10</b> U/M EA 40' ALTERNATE DESIGN POLE W/ 40' MA & 10' LMA GALVANIZED, INCLUDES ANCHOR BOLTS  PAINT ADDER: \$1,492	1	\$15,383.00	\$ 15,383.00	
002	<b>CO-615-40A-50-10</b> U/M EA 40' ALTERNATE DESIGN POLE W/ 50' MA & 10' LMA GALVANIZED, INCLUDES ANCHOR BOLTS  PAINT ADDER: \$1,577	1	\$16,329.00	\$ 16,329.00	
003	<b>CO-615-40A-55-10</b> U/M EA 40' ALTERNATE DESIGN POLE W/ 55' MA & 10' LMA GALVANIZED, INCLUDES ANCHOR BOLTS  PAINT ADDER: \$1,752	1	\$16,692.00	\$ 16,692.00	
004	<b>CO-615-40-60-10</b> U/M EA 40' STANDARD DESIGN POLE W/ 60' MA & 10' LMA GALVANIZED, INCLUDES ANCHOR BOLTS  PAINT ADDER: \$1,958	1	\$26,026.00	\$ 26,026.00	
005	<b>CO-PED-10</b> U/M EA 10' PEDESTAL POLE GALVANIZED, INCLUDES T-BASE & ANCHOR BOLTS  PAINT ADDER: \$225	1	\$1,349.00	\$ 1,349.00	

**Total Items Price \$ 75,779.00**

QUOTED PER CDOT STANDARDS  
~CODY CUHEL~

- 1) Quoted prices are valid for 30 days. Prices are subject to change if order is not released within 90 days from the date of the purchase order.
- 2) Quotation is subject to acceptance at time of order placement. Quoted unit prices are based on total quantities listed. Any variation in quantities or split purchase orders may result in additional charges.
- 3) This quotation is based upon Millerbernd Manufacturing Company Standard Terms and Conditions of sale.
- 4) F.O.B. Delivery Site-Freight included in pricing structure based on order consolidation. If dedicated truck is requested, additional freight will be incurred at time of invoice.
- 5) Please be advised delivery will be based on manufacturing lead times at time of release and may differ from quoted lead time.



**MILLERBERND**  
MANUFACTURING COMPANY

622 6th Street South  
Winsted, MN 55395

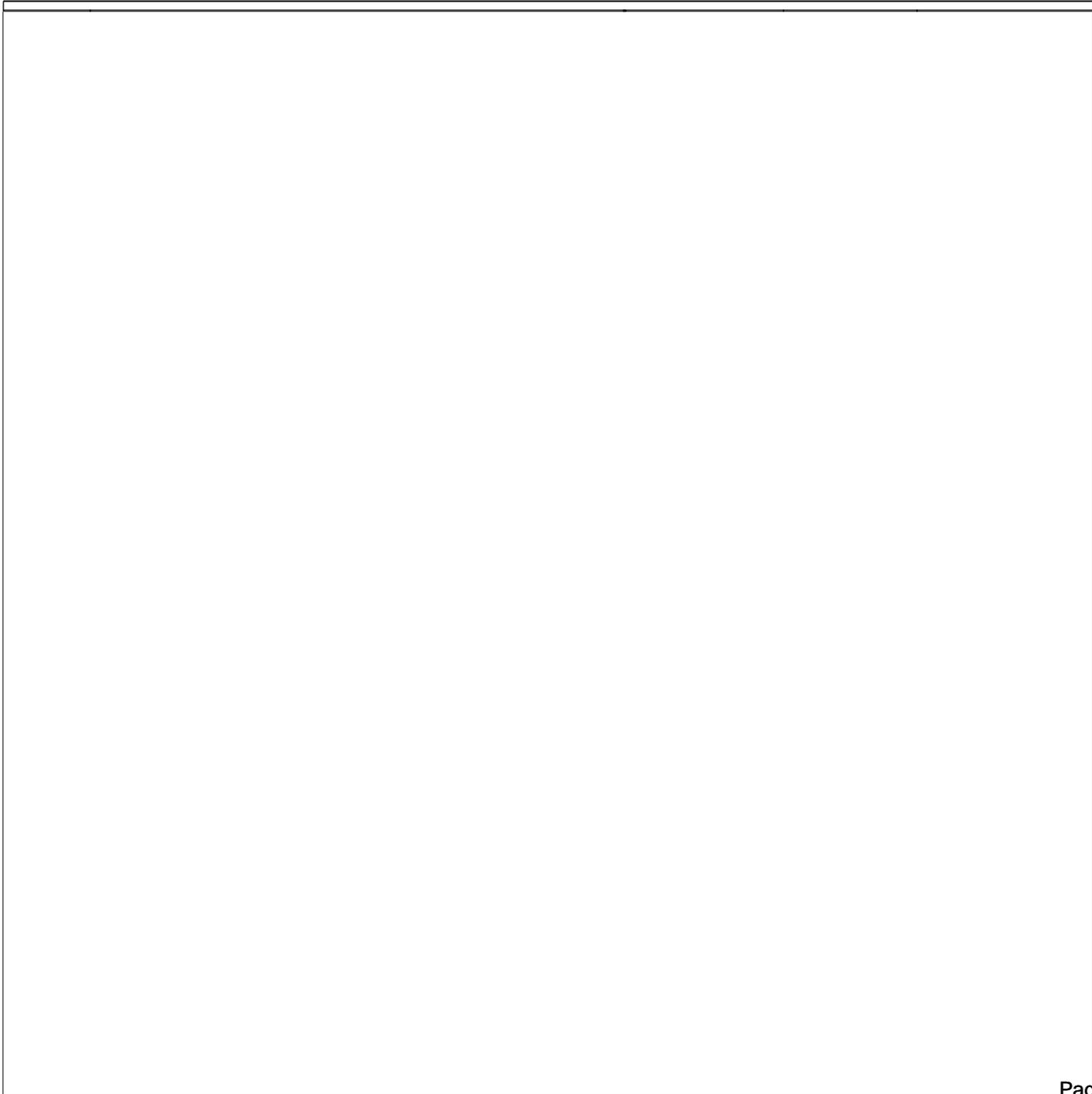
P 320.485.2111  
F 320.485.4420  
www.millerberndmtg.com

Our Quotation # 135198-00  
06/15/2021

To :  
TOWN OF BENNET, CO  
207 MUEGGE WAY  
BENNETT CO 80102  
United States

Quotation Valid Thru : 07/15/2021

Attention : DAYMON JOHNSON





Josh Greene

to me

12:56 PM (1 hour ago)



Hi Daymon,

Illumination Systems acknowledges that we are voiding the PO issued by the Town of Bennett due to billing issues and requirements by Millerbernd that cannot be met by ISI. This is to streamline the payment process for both Millerbernd and the Town.

Thanks,

Josh Greene

C&I Inside Sales Manager

**■ Illumination Systems Inc**

5 South Kalamath Street | Denver, CO 80223

P: 303.295.2900 | F: 303.293.8337 | D: 303.976.7727

[email](#) | [website](#) | [newsletter](#) | [linkedin](#) | [quickstart](#)

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Ok, thank you.

Got it.

Ok, thanks.

Reply

Forward

## **Suggested Motion**

I move to authorize the Town Administrator to execute a contract with Millerbernd Manufacturing Company, in a not-to-exceed-amount of \$75,779, for the direct purchase and delivery of the mast arms for the Highway 79 & Marketplace intersection project.

**RESOLUTION NO. 876-21**

**A RESOLUTION LIMITING THE HOURS OF OUTDOOR WATERING**

**WHEREAS**, due to warm temperatures this year, water consumption is quickly increasing as it does this time every year; and

**WHEREAS**, the Board of Trustees finds it is necessary to manage summertime water usage in order to protect available and future water supply and has determined that mandatory water conservation measures are in the best interest of its residents; and

**WHEREAS**, Bennett Municipal Code (B.M.C.) § 13-3-410 authorizes the Board of Trustees to adopt a resolution limiting the hours of outdoor watering and otherwise limiting the use of water within the Town; and

**WHEREAS**, pursuant to B.M.C. § 13-3-440, any person who violates the terms of this resolution may be subject to a fine as set forth in Section 4 of this resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF BENNETT, COLORADO:**

**Section 1.** Pursuant to B.M.C. § 13-3-410, the Board of the Trustees of the Town of Bennett hereby imposes the following mandatory water use restrictions, which shall apply to all persons receiving water service from the Town water system.

A. Irrigation of landscaped areas, including residential and commercial lawns, gardens, fields, parks, and rights-of-way and medians, with hose-end sprinklers or automatic irrigation systems shall be limited to the following:

1. Irrigation of landscaped areas by all customers is prohibited between the hours of 10:00 a.m. and 6:00 p.m. Hand watering (i.e., watering while holding a hose in your hand) of landscaped areas is also prohibited between the hours of 10:00 a.m. and 6:00 p.m.

**Section 2.** Upon personal application for a special permit, the Town Clerk or her designee may issue a special permit for a modified water schedule for thirty days for new seed, or twenty-one days for new sod, or for a time determined appropriate for other exceptional requirements. Those exceptions are limited to new landscaping, or those individuals or entities who may have common areas, grounds, or buildings served by a single sprinkler system.

**Section 3.** The mandatory restrictions set forth herein shall commence immediately and shall remain in effect until repealed or modified by the Board of Trustees. By enacting the mandatory water restrictions set forth herein, the Board of Trustee's goal is to ensure that adequate water is available for domestic use and that the Town's water system is able to maintain levels of service to the Town's customers for domestic use. Town staff shall review data and actual water usage, and shall report such usage along with the usage for the same period the

previous year to the Board of Trustees, which may take action to extend, modify or repeal the water restrictions set forth herein.

**Section 4.** Pursuant to B.M.C. § 13-3-440, any person who is found to have violated this resolution may be punished as follows: by a warning for the first violation; a fine of one hundred dollars (\$100.00) for the second violation during the calendar year; two hundred fifty dollars (\$250.00) for the third violation during the calendar year; five hundred dollars (\$500.00) for the fourth violation during the calendar year; and five hundred dollars (\$500.00) for the fifth violation during the same calendar year. Additionally, for the fifth violation, the Town may install a flow restrictor to limit water to indoor use only. Each day of violation shall constitute a separate offense.

PASSED AND ADOPTED THIS 22nd DAY OF JUNE 2021.

TOWN OF BENNETT, COLORADO

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Darvin Harrell, Mayor Pro Tem

ATTEST:

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Christina Hart, Town Clerk

### **Suggested Motion**

I move to approve Resolution No. 876-21 – A resolution limiting the hours of outdoor watering.